

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3886 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

JAMNAGAR DIST COOPERATIVE BANK LTD.

Versus

JAMNAGAR CENTRAL CONSUMER COOPERATIVE STORES

Appearance:

MR DM THAKKAR for Petitioner

MR BB NAIK for Respondent No. 1

MR J.S. YADAV with MRS KETTY A MEHTA for Respondent No. 2

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 16/06/2000

ORAL JUDGEMENT

The petitioner challenges certain observations made in the order of the Gujarat State Co-operative Tribunal, made on 31.7.1987, which have the effect of absolving the respondent No.2 from its liability as a

guarantor for the decretal amount.

2. The petitioner Bank filed Lavad Suit No. 172/84 in the Court of Registrar's Nominee, Rajkot, against the respondents. A decree was passed in favour of the petitioner on 21.6.1986 by the Registrar's Nominee, by which the respondents who were the original defendants were directed to pay a sum of Rs. 17,08,951.47 with interest on the principal amount of Rs. 9 lakhs and the costs of the suit. A further direction was given that the decretal amount was to be recovered from the property of the respondent No.1 and if any deficit remained, then that was to be recovered from the respondent No.2. In the copy which is annexed to the petition, in the operative portion of the order of Board of Nominee, the respondent No.2 is described as Chief Secretary, Government of India, Central Secretariat, New Delhi.

3. The respondent No.1 principal judgement debtor filed an Appeal No. 195/86 before the Co-operative Tribunal, Ahmedabad, against the said decree. The Tribunal, while dismissing the appeal and confirming the order of the Registrar's Nominee, observed in the body of the order that there was an arbitration clause in the agreement, which was entered into between the Government of India, the Bank and the principal debtor to the effect that in the event of any dispute arising between the parties, it would be resolved by referring the matter to the arbitrator.

4. The learned Counsel for the petitioner contended that the observation of the Tribunal that the Registrar's Nominee could not have decided the issue regarding the liability of the surety i.e. the Government of India under Section 96 of the Gujarat Co-operative Societies Act, in view of the arbitration clause, was wholly without jurisdiction because no such contention had arisen before the Tribunal since the surety - respondent No.2 had not challenged the decree before the Tribunal. Therefore, the observations made in the body of the order to the effect that the order of the Registrar's Nominee to the extent that it holds the Union of India liable as a surety was non-est, should be deleted.

5. The learned Counsel appearing for the respondent No.2 relying on the affidavit-in-reply which has been filed and relying upon the documents on record pointed out that the Union of India was neither a party before the Registrar's Nominee, nor before the appellate authority. He pointed out that before the Registrar's Nominee, Chief Secretary was made as a party and not the

Union of India, while in the appeal which was filed by the principal debtor, Director, Government of India was made a party as is clear from the title of the present petition, which has been filed against the appellate order. It was submitted that the guarantee period had already expired as pointed out in paragraph 4 of the affidavit-in-reply on 31.12.1978 and there was no renewal thereafter and therefore, there was no liability under the deed. In paragraph 7 of the affidavit-in-reply, it was contended that the Government of India was not made a party before the Registrar's Nominee and the Chief Secretary was made a party and therefore, no relief could be granted against the respondent No.2.

6. This petition has been filed under Article 227 of the Constitution of India. The learned Counsel for the petitioner makes it clear that he does not challenge the operative portion of the decision of the Tribunal, but he objects only against the observations made in the body of the order, which have the effect of absolving the respondent No.2 from its liability as a surety. The contention that because there was no appeal filed by the respondent No.2 the observation absolving the respondent No.2 could not have been made by the Tribunal over-looks the fact that there were cross objections filed by the petitioner in that appeal before the Tribunal in which the question of the liability of the respondent No.2 was directly raised and it is in that context that the Tribunal has made the observations. Therefore, it cannot be said that the Tribunal has committed any jurisdictional error in deciding the matter. The petition is therefore, rejected. Rule is discharged with no order as to costs. This will be without prejudice to the rights and contentions of the parties before the executing forum.

*/Mohandas.